IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 27881 of 2007(T)

PETITIONER:

SAILAJA V.,
USHUS HOUSE, KIZHAKKUMBHAGOM, KAZHAKKUTTAM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND

RESPONDENTS:
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1. **THE KERALA STATE FINANCIAL ENTERPRISES LTD., REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, P.B.NO.510, MUSEUM ROAD, THRISSUR, PIN-680 080.**

2. **SPECIAL DEPUTY TAHSILDAR (R.R.), KERALA STATE FINANCIAL ENTERPRISES LTD., NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.**

3. **THE BRANCH MANAGER, KERALA STATE FINANCIAL ENTERPRISES LTD., NEYYATTINKARA MAIN BRANCH, THIRUVANANTHAPURAM DISTRICT.**

4. **THE BRANCH MANAGER, PUNJAB NATIONAL BANK, PALKULANGARA BRANCH, THIRUVANANTHAPURAM.**

5. **THE DISTRICT COLLECTOR, COLLECTORATE, THIRUVANANTHAPURAM.**

6. **THE VILLAGE OFFICER, KAZHAKKUTTAM VILLAGE, THIRUVANANTHAPURAM DISTRICT.**

BY SR. GOVERNMENT PLEADER SRI.T.T.MAHMOOD
ADV. SRI.K.P.SUDHEER
SRI.M.K.CHANDRAMOHAN DAS, SC, KSFE, LTD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE INTERIM ORDER DATED 12.1.2006 IN W.P.(C). No.1080/2006 OF THIS HON'BLE COURT.

EXT.P2: COPY OF THE ORDER OF THE DRT, ERNAKULAM IN O.A.No.157 /03 DATED 18.03.2005.

EXT.P3: COPY OF THE LETTER NO.ARMB/TVM 20 DATED 1.9.07 OF THE CHIEF MANAGER.

EXT.P4: COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 6TH RESPONDENT DATED 16.8.2007.

EXT.P5: COPY OF THE LETTER NO.784/07 DATED 4.9.07 ISSUED BY THE 6TH RESPONDENT.

TRUE COPY

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.27881 of 2007

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Dated this the 19th day of October, 2007

JUDGMENT

Heard the learned counsel for the petitioner. The learned counsel appearing for the 1st respondent and the counsel appearing for the 4th respondent as also the learned Government Pleader.

2. The petitioner is the owner of 60 cents of land in Re-survey No.310/1 of Kazhakuttom Meenamkulam village. The petitioner mortgaged this property as security for the loan availed by her husband from the Punjab National Bank. The 4th respondent herein, the Bank filed O.A before the DRT, Ernakulam for recovery of the loan amount. There after the bank agreed for extension of OTS facility to the petitioner for an amount of Rs.71.15 lakhs. The petitioner arranged a prospective buyer for the property with the consent of the bank. The grievance of the petitioner now is that the Kerala State Financial Enterprises and the Village Officer objected to the sale on the ground that the property is mortgaged to the K.S.F.E in respect of loan availed by the petitioner's husband from the K.S.F.E.

3. The petitioner contends that this particular property was never mortgaged to the K.S.F.E in any capacity, in any transaction. On the other hand other properties in Survey Nos.315/1-1 and 146/3 of Thirupuram village have been mortgaged with the K.S.F.E. Therefore, the K.S.F.E and the authorities under the Revenue Recovery Act cannot lay any claim on the petitioner's property in Survey No.310/1 of Kazhakuttom, Meenamkulam village, is the contention raised in this writ petition. The revenue authorities are refusing to issue a no objection certificate in respect of the said property of the petitioner to enable the petitioner to sell the property. In the above circumstances the petitioner seeks the following reliefs:

i. call for the records leading to Ext.P5 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction.
ii. Declare that the KSFE has no claim over the petitioner's property in Re.Sy.No.310/1 of Kazhakkuttam Menamkulam village and that the petitioner is entitled to sell the property in any manner she likes with the consent of the Punjab National Bank.
iii. Issue a writ of mandamus or any other appropriate writ, order

of direction commanding the respondents not to raise any objection or create any obstruction to the petitioner's selling the property in Re. Sy.No.310/1 of Kazhakkuttom Menamkulam village.

iv. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 6th respondent to issue non-encumberance (sic objection)certificate in respect of the petitioner's property in Re-Sy.No.310/1 of Kazhakkuttom menamkulam village forthwith.

The contention of the standing counsel appearing for the K.S.F.E is that although this particular property is not mortgaged to the K.S.F.E, since the petitioner is a guarantor for the loan amount due form her husband, she cannot be allowed to sell this property also. But it is admitted that there is no mortgage, charge or attachment on this particular property, whereas the property is mortgaged to the 4th respondent bank. As such the K.S.F.E cannot now prevent the settlement of dues as between the petitioner and the bank by selling the said property. By Ext.P5 order of the Village Officer, the Village Officer has prohibited the petitioner from selling the property. Ext.P5, under such circumstances is unsustainable and therefore, Ext.P5

is quashed. It is clear that the K.S.F.E or the Revenue Recovery Authorities have no right to prohibit the petitioner form selling the property. It is so declared. The petitioner shall therefore be issued with a no objection certificate pursuant to Ext.P4 application to enable the petitioner to sell her said property to settle the dues of the Bank with which the property is mortgaged. This shall be done within one week from the date of receipt of a copy of this judgment.

S.SIRI JAGAN, JUDGE

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